# I'm Okay;
# We're Not So Sure About You

*A Report of the B.C. Human Rights Commission on Extensions to the Code*

*February 1983*

**Human Rights Commission of British Columbia**

*Prepared by Eleanor Wachtel*

## PREFACE

When we were appointed Human Rights Commissioners in November 1981, we inherited from the outgoing Commission 31 Recommendations for Changes to the Human Rights Code. This was the culmination of the previous Commission's work during its term of office. The B.C. Code is almost a decade old. Innovative legislation of this kind inevitably requires updating and fine-tuning. Thus, for example, the Ontario, Québec, and federal Human Rights Acts have all been rather extensively amended recently—to include new areas of protection and refine the administration and workings of the codes. Manitoba too has just initiated plans to modify its code.

With little hesitation and indeed with considerable commitment, we endorsed the principles of the Recommendations for Changes to the Human Rights Code of B.C. To underline that commitment, and further measure the climate of concern among the province's citizenry, we also undertook a series of local, open hearings in 1982. (There were 8 hearings in all: Victoria—March 29; Port Alberni—March 30; Nelson—May 17; Kelowna—May 18; Farmworkers in Vancouver—May 21; Prince George—May 25; Williams Lake—May 26; Vancouver—June 17 & 18.)

It would hardly be an exaggeration to say that we were shaken and surprised by the degree of frustration and anger we encountered. In failing to act on the previous Commission's recommendations, and allowing more than three months to elapse before naming new Commissioners, the government seemed to many to be signalling their indifference. Some people were openly suspicious that the Commission hearings were simply a means of diffusing concern or merely a sop to reformist groups.

It will soon be two years since those original recommendations—themselves based on hearings and lengthy deliberations—were put forward. To date, there has been no official positive reaction from government to indicate a move towards implementation. Groups pressed us for action; to heed the recommendations of the government-appointed committee for the International Year of the Disabled, for example, and to amend the Code in response to the recommendations of the previous Commission.

Another source of concern we felt in the hearings was the extent to which they called forth heartfelt articulation of suffering in areas that neither the Recommendations nor the Human Rights Code currently address. Clearly, there are all too few forums where people from the various regions of the province can get a hearing and which welcome the airing of problems. No one interested in human rights, in the rights of people to live in dignity and with equal opportunity in Canadian society, can afford not to hear.

Thus, the plight of farmworkers compelled our attention from the very first month of our appointment. We were aware that existing provisions didn't enable the Human Rights Branch to respond to complaints from the farmworkers with respect to perceived discrimination created by other legislation, but we were firmly convinced that there was a connection. It is arguably no coincidence that farmwork is an occupation practised almost exclusively by ethnic minorities. So that they could present their case, we decided to conduct a special day-long hearing devoted

exclusively to their predicament. More than 30 briefs were presented. Similarly, we recognized the structurally disadvantaged situation of domestic workers, which is a long-standing, neglected area of concern. In addition, we sought to give priority to Native Indian rights by establishing a permanent Native Indian Advisory Committee.

The Commission also anticipates a whole set of new wrinkles introduced in anticipation of the as yet infant document, the federal Charter of Rights and Freedoms—in particular, the equality provisions found in Section 15 which will take effect in April 1985. Its role and implications for human rights codes had also to be addressed.

This three-part report is both a record of findings from hearing testimony and briefs, and a measure of our commitment to change. We have drawn on our own experience and expertise in the field of human rights, as well as on the documentation put before us. The first report recounts the situation of farmworkers and domestic workers; the second delineates new areas for expanding human rights protection; and the third takes up administrative aspects and the strengthening of existing coverage. Our purpose is to be a catalyst for action. The Human Rights Commission endorses quick implementation of the Recommendations for Changes to the Code. The credibility of the Commission, of this province's dedication to human rights, and most important, the very quality of life in British Columbia are at stake.

Charles Paris (Chairperson)

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## EXTENDING THE CODE

*Introduction*

The Commission is putting forward 26 recommendations for extension of the Human Rights Code. Why so many? Discrimination, after all, has been around for a long time; are we suddenly discovering new types? Are we inventing new human rights to apply?

As the sections below (covering various specific concerns raised) show, the Commission has indeed been responding to changing public perceptions and evolving sensibilities. But, by way of an introduction, think back to a children's tale common to many traditions:

> A powerful and very impatient ruler summoned his greatest sage. "You bother me with all your subtleties," he complained. "I have no time to read the great books, study the legal codes, acquire philosophy. I understand action and short answers to short questions. Now, if you can teach me law while standing on one leg, I will reward you. If your explanation is too long and your other foot touches the ground, you'll never stand on two legs again."
>
> The wise man smiled. He lifted one foot and said, "Do unto others as you would have them do unto you. That is the foundation. Everything else is detail."

In this report, the Commission responds to a number of vexing "details". The changes we are endorsing would extend the Code's protection to the disabled, to families, to homosexuals and lesbians, to the elderly and the young, and to workers whose lower wages result from historical sex discrimination.

When people talk about human rights, they often invoke concepts of human dignity. It sounds good, but sometimes it's a little abstract. What we deal with is the proposition that, although everyone may not have equal abilities, *everyone is entitled to equality of opportunity*. You should have the same chance as anyone else. You shouldn't be eliminated in the first round just because you are black or Catholic or female or brown-eyed or short. (Singer Randy Newman satirized this sort of unthinking dismissal in "Short People", whose refrain is: "Don't want no short people 'round me.") Whether the goal is obtaining housing or a job or getting into a discotheque, whether you want to buy insurance or sell a periodical, any democratic society must guarantee you a fair crack at its goods and services—equality of access and equality of opportunity.

That's the bottom line for human rights. Are you being evaluated, screened or welcomed as an individual—with all your own quirky virtues and vices—or are you being viewed as a member of a class or type of person? It's ironic that people who discriminate are actually failing precisely to do just that—to distinguish one person from another—but instead, lump them together on the basis of skin colour or religion or whatever.

So when we talk about the joys of living in an open, pluralistic society, we don't mean some utopia where everybody loves one another; only a place where individuals have an even break. It is something of a paradox that human rights advocates, rather than being a bunch of do-gooders rushing around preaching blanket harmony, are actually demanding a basic recognition of individual ability and potential. Instead of relying on the convenient shorthand of group privilege or opprobrium, you have to genuinely see who is before you and treat that person accordingly.

*Deeds, Not Thoughts*

The Human Rights Commission is often challenged with the assertion: "You can't legislate a change in people's hearts." Our response to that must be threefold. The first part is the pragmatic side to the answer. The law deals with the possible; it seeks to change what can be changed. If we do not change people's attitudes, at least let us change their actions.

This is the position taken by many of the influential human rights advocates in Canada. Dr. Daniel Hill, former director, then chairman, of the Ontario Human Rights Commission, draws a careful distinction between prejudice on the one hand and discrimination on the other. He defines prejudice as a *state of mind*, a set of negative attitudes held by one person or group about another, tending to cast the other in an inferior light, despite the absence of legitimate evidence. Discrimination, on the other hand, is generally an *overt or covert act*, such as denying an individual employment, housing, accommodation or other services, in the public or private sector. It is necessary to recognize that a person can be prejudiced, and yet prevented from acting out his prejudices in a discriminatory way. Hill sees this as the actual objective of human rights legislation (see *Human Rights in Canada: A Focus on Racism*).

Hill elaborates as follows: "Human rights laws are not intended to generate feelings of inter-group brotherhood where none exists. They are, however, intended to ensure fair treatment of minority groups despite the existence of such feelings. Employers are not compelled by law to love blacks; they are, however, required to treat black employees and job applicants as they do other employees. Landlords are not compelled to befriend Asians; they are, however, required to treat Asians as they would anyone else in the rental and administration of property. This does not mean, of course, that bigotry or prejudice are to be condoned. It simply means laws are addressed to that

aspect of the problem for which they are most appropriate. Human rights law, like other laws governing commerce, simply sets out standards for practice—not standards of thought or feeling--for people engaged in public-market activity" (*Ibid.*).

The General Counsel for the Canadian Civil Liberties Association, A. Alan Borovoy, O.C., ever controversial, takes this position a step further.

> In some ways brotherhood ceremonials and celebrations have a way of undermining the quest for human rights. The brotherhood program confuses the picture. It puts the emphasis on our attitudes and feelings rather than our conduct and behaviour. As a result, many people excuse the denial of fair play to minority groups if they are able to say that they like the minority groups. How often, for example, have discriminatory landlords, proprietors, and employers made the comment: "Some of my best friends are. . . ."
>
> —*Human Rights and Racial Equality: The Tactics of Combat*

## *Self-Interest, Not Altruism*

The further implication of this pragmatic, 'no-nonsense' approach towards human rights legislation is equally clear. Human beings are not likely ever to behave like saints. It is more sensible to base a strategy on what we can see, hear and remember about human behaviour and not what we can wish for. The chief instrument for improving human behaviour is pressure. The idea is to exert various forms of pressure so that those whose conduct you are trying to change will have it as a matter of self-interest to make the change, not as a matter of altruism (A. Alan Borovoy).

## *"Pass-the-Buck" Bigotry*

The second part of our response is perhaps most surprising. It is that a great deal of human rights enforcement is not necessarily aimed at people who see themselves as prejudiced, but at those who maintain that they are merely acting prudently and pragmatically.

Unique among public policy issues, people tend to see human rights in terms of love and kisses, rather than in terms of reducing inappropriate behaviour patterns, A. Alan Borovoy has argued. So they keep using the defective yardstick—how do people *feel* about one another, ignoring the fact that most discrimination in the public marketplace is not practised by Nazis and Ku Klux Klanners who hate minority groups, but by polite, otherwise reasonable, courteous entrepreneurs, motivated not out of animus, a need to vindicate hatred, but out of a desire to enhance profits, out of a perceived business interest.

This has been dubbed "pass-the-buck bigotry" (Borovoy) or "nice guy discrimination" (Hill). Insisting on his own impartiality, a building manager refuses to rent an apartment to a Native Indian family on the grounds that other tenants would be offended and move out, resulting in a loss of revenue. In fact, when petitions have been circulated among tenants where landlords made such claims, the vast majority either welcomed or were indifferent to the presence of minority group neighbours. Similarly, employers will reject job applicants—women or visible minorities—on the grounds that it will disturb working relationships or undermine confidence among prejudiced customers. It's not *they* who object, of course.

Even if this argument is self-serving or self-deluding, it provides the human rights legislator with a useful lever. If no one admits to prejudice and only self-interest induces discriminatory behaviour, then tough legislation can tip the balance of self-interest in favour of equal treatment. Excuses of pragmatism succumb to practical realities.

*Action Can Induce Attitudes*

There is a third, more idealistic response to the challenge "you can't legislate love". We are accustomed to thinking that action reflects interest; prejudice gives rise to discrimination. Another generally held belief is that prejudice is often a result of ignorance, misperception and irrational fear. Let us consider the possibilities if we turn things around and focus on the educational functions of pragmatic human rights law. With vigorous enforcement, equal opportunity measures not only articulate ideals but also command certain positive action. This forces new experiences on the prejudiced. The sun still shines on a racially integrated beach; the pipe joined by a woman welder is just as strong. The law at least creates the conditions for learning new attitudes through practising appropriate behaviour.

Even those who most strongly advocate the hard-headed approach are happy for any secondary benefits: "If, as an expression of public policy, the law weakens prejudicial feelings, so much the better. If, as a result of being forced by law into closer contact with minorities, members of the larger society are freed of their prejudicial misconceptions, so much the better" (Hill).

*Not Perfect Justice, Less Injustice*

Human rights are based on the principle that there is no dignity for anyone as long as there are members of our society who are deprived of their dignity. An act of discrimination isn't simply an individual violation, it is a rip in the social fabric. This is especially pertinent where anti-discriminatory action is not only necessary but possible.

"People make a mistake," says Alan Borovoy, "to look for a resting place in history where problems become solved. Too many people are looking for a utopian situation where justice will be obtained. This is at one and the

same time a naïve and perilous view of reality. We have to steel ourselves for a never-ending struggle not to obtain justice, but to reduce injustice."

*Reasonable Cause*

Over the years, a number of grounds for discrimination—such as race or creed—were specifically prohibited by legislation. Eventually, these provisions were amalgamated and rationalized in more or less encompassing human rights codes. No legislation can anticipate all the cases that will arise under a particular provision, nor can legislators foresee how public attitudes and expectations will change. In order to enhance the flexibility of the legislation and increase its useful life, the B.C. Human Rights Code, when passed in 1973, was equipped with a sort of omnibus device—the concept of "reasonable cause".

It appears in three sections. No one may exclude people, deny services or otherwise discriminate *without reasonable cause* in terms of access to public facilities, accommodation and service (section 3); employment (section 8); and membership in trade unions and occupational associations (section 9).

What this has meant is that, in addition to those grounds that are named—race, religion, colour, sex, ancestry or place of origin (in section 3), along with age, marital status, political belief, or unrelated criminal record (in sections 8 and 9)—protection might also be extended to other individuals who encounter discrimination where there is no "reasonable cause" shown. "Reasonable cause" has been invoked on behalf of pregnant women, landed immigrants, and the physically disabled; on the basis of age, attire, and sexual orientation. For example, a board of inquiry was able to rule that the dismissal of a receptionist/clerk simply because she was pregnant was unjustified.

A case involving the College of Physicians and Surgeons of B.C. found that while Canadian-born and educated doctors were placed on a permanent register and there

were no restrictions as to where in the province they were entitled to practise, landed immigrant doctors with the same education, qualifications, and professional backgrounds were confined to a temporary register and required to practise in designated "under-doctored" areas of the province until they became Canadian citizens. "Reasonable cause" simplified the issue by eliminating an overly technical defence. The College tried to argue that it treated all landed immigrants equally; if a Canadian were to go abroad, become a citizen of a foreign country, and then return to B.C., he/she, too, would have to practise in a rural backwater. Thus, they were not discriminating on the grounds of place of origin, they were 'discriminating' against everyone equally. The Board of Inquiry saw the issue quite differently. The College was clearly discriminating against landed immigrants *without reasonable cause*.

Unreasonable height and weight requirements were found to violate the B.C. Human Rights Code. And, in another case, an unreasonable restriction of an apprenticeship programme to persons under 25 years of age was considered discriminatory (although the finding turned on other grounds ultimately). And "reasonable cause" has the potential to protect people on the basis of language or political opinion.

Boards of inquiry have evolved a clear understanding that "reasonable cause" provisions "cover only conduct that has the effect of causing discrimination to an identifiable group" (Brief by the B.C. Civil Liberties Association). "Boards have argued that the intent of the statute is not to improve the reasoning processes of employers and hotel owners, but to recognize that groups other than those specifically named in the legislation also experience the effects of discrimination.* Therefore, the effect of the clause

* The notion of "reasonable cause" does have a precedent in that common law prohibits innkeepers and common carriers from denying their accommodation or services without reasonable cause, and this has been the case for hundreds of years without attracting criticism. Similarly, the word "reasonable" is applied in a plethora of laws, and

has been to expand the categories of persons to whom the protections of the Code are available. . . . The 'without reasonable cause' claims in section 9 directs the attention of legal interpreters specifically to considering whether discrimination is reasonable in view of the bona fide qualifications of a person" (Human Rights Branch report on developments up to 1977).

The concept of "reasonable cause" has been quite successful in providing flexibility and responsiveness without the requirement for constant legislative amendments (which normally are made at such a deliberate pace that they may come to be regarded as outmoded before they are proclaimed).

*The Commission Recommends:*

27.) That consideration be given to expanding Section 4 and 5 to prohibit discrimination without reasonable cause in the rental or purchase of property.

Sections 3, 8 and 9 already prohibit discrimination in public facilities, accommodation and service, employment and membership in trade unions and occupational associations without reasonable cause. While this has allowed the extension of protection to, for example, disabled complainants in specific cases, it does not make employers or the public generally aware of their obligations in these areas.

*The Commission Recommends:*

28.) That the Human Rights Commission be given power to issue guidelines, binding upon Boards of Inquiry, specifically

"the obligation to act reasonably is imposed on many aspects of business activity" (UBC Faculty of Law Prof. Bill Black).

describing the conduct that constitutes discrimination prohibited by the Code.

Despite the continuing utility of the "reasonable cause" concept and the need for its extension into other areas, it was repeatedly emphasized in submissions at hearings that the protection of the Code must be expanded to *explicitly* prohibit discrimination against certain groups. The explicit injunction against discrimination is crucial in informing both the public and the victims of discrimination of what constitutes public policy and what redress is available. Most people don't knowingly break the law. If they are informed, for example, that the Code precludes the denial of accommodation to the disabled, this sensitizes them to their obligations in this regard. Similarly, it proclaims to disabled people that protection is there. Should a situation occur, there is something they can do about it, besides suffer.

The brief by the B.C. Civil Liberties Association notes additional, more technical, advantages to explicit protection. Although they wholeheartedly support the "reasonable cause" provisions in sections 3, 8, and 9, and recommend its extension to sections 4 and 5, they observe that:

> Explicit protection has a number of advantages over implicit inclusion with the "reasonable cause" provisions. The most obvious is that future decisions could interpret the phrase "reasonable cause" in a narrower manner than it has been interpreted in the past so that certain groups would no longer be protected. Explicit protection eliminates that possibility. . . . Explicit protection can simplify and shorten the litigation process since it eliminates the need to consider whether the form of discrimination at issue is covered by the Code. For all of these reasons,

we believe that it is time to explicitly protect additional groups of citizens.

The remainer of this report deals with the explicit extensions of coverage. As noted above, the changes we are endorsing would extend the Code's protection to the *disabled*, to *workers whose lower wages result from historic sex discrimination built into the economy*, to *families*, to *homosexual men and lesbian women*, and to *the old and the young*.

## THE DISABLED: "I'M ALIVE! I AM ALIVE!"

*Tom:* *You guys ever read a story called "Premature Burial?"*

Sam and Jim shake their heads. . . .

*Tom:* *Anyway, it's about this guy who has this sickness that puts him into a coma every so often. And he's scared as hell someone's going to mistake him and bury him alive. Well, that's the way I feel about this workshop. It's like I'm at the bottom of a grave yelling "I'm alive! I am alive!" But they don't hear me. They just keep shovelling in the dirt.*

*Creeps*, David Freeman*

The *UNESCO COURIER*, in its January 1981 special issue on the handicapped, carried a message from the Director-General of UNESCO. It read in part:

> Our laws and, more generally the whole organization of our everyday life in its simplest acts seem to overlook the very existence of the handicapped. The fact that they are in many cases shut up in special institutions, kept dependent on assistance and cut off from the rest of the community perpetuates society's ignorance of their real needs and deepest aspirations.

1981 marked the International Year of Disabled Persons. Of the 130 recommendations contained in the Report of the Special Committee of Parliament on the Disabled and the Handicapped *(Obstacles)*, the very first called for amendments to the Human Rights Act in order to protect the disabled. Of the 38 recommendations articulated in

* The quotation (above) is from *Creeps* by David Freeman, the University of Toronto Press, 1972, page 14.

the Report of the British Columbia Committee for the International Year of Disabled Persons *(Challenges)*, number one is to amend the B.C. Human Rights Code. "The International Year of Disabled Persons has recognized in principle the rights of people with disabilities to participate fully in the community and to have equal access to all the services, goods and facilities enjoyed by other British Columbians. Strengthening the Human Rights Code should be regarded as a priority because it provides a basis for action in seeking equal treatment and consideration in such critical matters as employment, education, transportation and housing" *(Challenges)*.

The International Year of Disabled Persons raised expectations—not only among the disabled, but among Canadians generally who were becoming sensitized to existing inequities. A public opinion poll conducted in June 1981, halfway through that year, revealed that 92% believed that the physically and mentally handicapped should be protected from discrimination in any new constitution. And indeed, the Canadian Charter of Rights and Freedoms (in Section 15, which will take effect in April 1985) contains such protection. Similarly, after repeated attempts by the Canadian Human Rights Commission to amend the federal Human Rights Act, by the end of 1982, Parliament brought both the mentally and physically disabled under that protection. And just last summer, Ontario amended its Human Rights Code to specifically prohibit discrimination on the basis of mental or physical disability. (Québec already has such legislation.) In fact, B.C. is currently the only province in Canada *not* to include physical handicap as an *explicitly* prohibited ground of discrimination in employment. (Boards of Inquiry in B.C. have established, however, that such protection may be provided through the "reasonable cause" provisions.)

It is not surprising, then, that many of the groups who made presentations to us were distressed and angry that apparently no action had been taken to implement the

number one priority of the government's own committees. They could point to the Minister's remarks in the introduction to *Challenges*: "The needs and concerns of disabled people, however, cannot be resolved in one year. There must be ongoing commitment on the part of the Government, the private sector and disabled people themselves to continue the communication and achievements reached this year." The disabled were certainly maintaining their commitment: their patience in submitting yet another brief to yet another panel was admirable. Did we need any further evidence, this certainly demonstrated their determination that the government finally act.

Provincial commitments extended well beyond the International Year of Disabled Persons. British Columbia, along with the other nine provinces and the federal government, is a signatory to the U.N. Covenants on Human Rights. More than a decade ago, the General Assembly adopted and proclaimed the Declaration on the Rights of Mentally Retarded (quoted to us by the B.C. Association for the Mentally Retarded), which includes the principle that: "The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings."

Then in 1975, the U.N.'s General Assembly adopted and proclaimed the Declaration on the Rights of Disabled Persons which laid the groundwork for the International Year for Disabled Persons. Among the principles and rights endorsed was "the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible."

This Commission does not want to perpetuate the belief (that has grown during the past year) that these are hollow words. It would be a callous repudiation of all the work and spirit and dedication that were poured into activities of the International Year.

*An Even Break*

The slogan for International Year of Disabled Persons was: "In British Columbia, we're making an ordinary life possible." This is precisely what was repeatedly emphasized as the goal of disabled groups. No special privileges or hand-outs, simply—as with other groups afforded the Code's protection—the right to equality of access and full participation in society. Normalization and integration. Individual assessment rather than blanket assumptions.

> To speak of the rights of people who are mentally handicapped is to address the human rights of all citizens. It is an appeal for equal opportunity and equal access to the community; not an appeal for special status; not a plea for special rights and not a demand to be considered different. No person should be exempted from social responsibilities; we don't ask that for the mentally handicapped. When we seek to enforce personalized or individual rights, it is only because the needs vary with the person. The right to a full life, to a nourishing diet, to proper education, to good shelter, to warm clothing; these are the goals we seek for all people. . . .
>
> —Submission of the Capital Region Association for the Mentally Handicapped

*Access*

Discrimination against the disabled occurs at so many points of interaction in their lives that it would take volumes to recount.

> The disabled are a class of persons. Furthermore, we are a class of persons against whom discrimination is practised and in fact institutionalized. I need not waste this meeting's

> time by citing example after example, many of which are clearly evident. Any person here who is not aware of the discrimination to which disabled persons are constantly subjected only supports the contention that prejudice and discrimination are based on ignorance.
>
> —Associated Disabled Persons of B.C.

Consider briefly one obvious example—being in a wheelchair—and one bumps up against sidewalks and buildings that aren't ramped for wheelchair travel access; washroom stall doors that open the wrong way; telephone booths and elevator buttons that are out of reach; universities, colleges, concert halls, public buildings (Parliament Hill!) that don't accommodate persons in wheelchairs. Architects and builders have agreed that creating houses accessible to the disabled entails minimal costs—as long as accessibility is included in the design rather than attempted subsequently.

To continue with our obvious example of moving about in a wheelchair, one of the most poignant instances of inaccessibility occurred last fall when a young boy, confined to a wheelchair since birth, wanted to see the film "E.T." the evening before entering hospital to undergo surgery. He was turned away because the second floor cinema where the movie was playing was deemed inaccessible to anyone who could not use the stairs unaided. The boy's father offered to carry his son up and down and place him in a regular seat. But no, he was refused; something to do with fire regulations. (The fire department claims that there are, in fact, no specific prohibitions on admitting the handicapped, and the case is currently under investigation.)

The irony, of course, is that "E.T." is about how a different kind of person is treated by society. E.T. doesn't move very easily; much of the time he is carried in the basket of a bicycle. He's not exactly a good-looker either: "15 kilos of well-organized, slightly overripe baby beef

liver" is how one reviewer described him. But he's a healer who teaches young Elliott (who hides him) about love and trust. The boy, in return, is concerned with E.T.'s dignity; he's afraid that if the authorities capture him, he'll be lobotomized, destroyed. Through E.T. he recognizes that people who are different should be treated humanely.

In some ways, these are the easiest examples to understand. It takes little imagination to empathize with the desire of an eight year old boy to see the movie that everyone he knows is talking about. Nor to admire the heroism of a Terry Fox. One can even project oneself into a wheelchair, catapulted there by a skiing or car accident, and begin to realize how closed the world might seem. But then, there are disabilities that undermine appearance even more, and we hear how a grown man, with cerebral palsy, was refused admission to a pub. Then, problems of "attitude"—the attitude of everyone else—become even more acute.

*Mental Barriers*

> For the most part, people tend to put up mental barriers when they see people with an obvious disability. Unfortunately, almost all commercial advertising and publicity depicts "the beautiful people". People tend to base their first impression of other people on appearance. When they see someone who is disabled, they too often see the disability as that person's most significant and outstanding characteristic.
>
> —Canadian Rehabilitation Council for the Disabled (reported in *Obstacles*)

*Obstacles* explained the significance of its title:

> Disabled persons each have particular obstacles to overcome which are mental or physical in origin. For many, these are the least

> of their problems. More serious are the obstacles they face which are caused by other people's attitudes. Disabled persons are deprived both of rights and opportunities because of the myth that they are "strange", that they lead lives which "normal" people cannot comprehend. This leads to the belief, widely held, that they are not motivated by the same needs for love, participation, opportunity, expertise, achievement, appreciation and self-esteem that govern the lives of other Canadians.

This is no less true for people with "invisible disabilities"—epileptics, the mentally handicapped, the deaf, the learning disabled—who also need protection from discrimination and access to an "ordinary life". This was highlighted in the brief of the B.C. Epilepsy Society, Victoria Branch:

> Many persons have disabilities, physical or mental, which are immediately perceptible, and these people are burdened with an incessant "pre-judging" of their capabilities by all those they meet. Their frustration by such reactions must be overwhelming at times. Most people with epilepsy are at least spared the unrelenting nature of these judgments, since their disability will only be known to those who see them on a frequent basis. At the same time, the very unpredictability of their condition imposes its own problems.

The biggest problem, of course, is employment. Handicapped people make up approximately 9.4% of the population. It is estimated that as many as 90% of *employable* handicapped are currently unemployed. Usually it's a matter of an employer's failure to evaluate the person's ability, instead of just taking in their disability. "Fine tuning—that's what the Canadian Human Rights

Commission and other Human Rights Commissions are asking," explained Gordon Fairweather recently. The Chief Commissioner of the Canadian Human Rights Commission explained: "Employers must set their standards in terms of the real requirements of the actual job. Then they must consider each applicant in terms of what the individual actually can do, looking past the fine words, so that each person be treated as he or she really is, not as he or she would be if they conformed to the stereotypes in our minds."

To consider the example presented by the Epilepsy Society, epileptics find themselves caught in a double bind. If they are truthful when filling out job application forms and indicate that, yes, they are epileptic, they may be rejected outright. If they try to hide it, they are in constant apprehension of being found out. Such anxiety may itself precipitate a seizure, or one may come on if they skip medication because it is too conspicuous. Thus, they are discovered and fired.

Although there may be some jobs for which some epileptics are not suitable, the great majority of types of work is attainable, especially as a result of new anti-convulsant medicine. American studies cited demonstrate that, if anything, epileptics had *fewer* industrial accidents than other workers.

Unless the employer can show that the handicap poses a direct risk to job safety, a worker should not be denied the opportunity to compete on an equal footing for jobs that are available. As Gordon Fairweather noted: "People with disabilities are breaking out of the bounds of charity we have woven around them in the past and want the chance to be self-supporting." Since so much of society's respect is meted out on the basis of work, it is crucial to maintain genuine accessibility to this fundamental aspect of life.

### *Two Guiding Principles*

Maintaining access entails two principles: 1.) what the

Canadian Human Rights Act calls "bona fide occupational requirements" or as worded in Recommendation 7, "unless that condition materially affects the quantity or quality of production". This means that job pre-requisites must be appropriate and truly relevant to the work to be done. For example, one case resolved by the federal Human Rights Commission concerned a man with a hearing disability who was denied employment as a spray painter. This was deemed by the Commission to be an irrelevant disability and the employer agreed to offer him the next job that came open. The hearing requirement had been applied unthinkingly because of system-wide physical standards set out in terms of broad screening procedures.

The second principle: 2.) is "dignity of risk". Since the basis for equal access for the disabled is dignity rather than paternalism, this notion must encompass a person's right to decide for him/herself whether to undertake work that might put him/herself alone, and no one else, in danger. Able-bodied people do this all the time. Coal-miners, sailors, stuntmen, high steel workers. Why should disabled persons, who often brave enormous risks in their daily lives, be excluded from the same freedom of choice? As long as the applicant understands the risk, wishes to accept it, and doesn't endanger anyone else, he/she should be given the same opportunities as others.

These two concepts of applicability of job requirements—that is, judge the individual in relation to the actual needs of the job, along with "dignity of risk"—define the appropriate relationship between an employer and a disabled person. Effective guidelines have already been developed in jurisdictions where disability is an explicitly prohibited ground, and here in B.C. under "reasonable cause" provisions.

### *Changes to the Code*

A recent B.C. court decision (that came down more

than three years after the original complaint) has disheartened many concerned with the rights of the disabled. In this instance, the disability was minor, if a disability at all.

## HIGH TIME RIGHTS CODE AMENDED

Your recent editorial on the B.C. Supreme Court decision to uphold a human rights inquiry decision to allow the Burnaby Fire Department to deny David Andruchiw a job because of a slight physical handicap is a poignant reminder of how unprotected mentally and physically handicapped people are under the B.C.'s Human Rights Code (Fighting Fire, Dec. 16).

If Mr. Andruchiw, who is in excellent physical condition and has an "insignificant abnormality of the spine" can be denied a job by an employer simply on the basis of an "honest belief" that the disability would interfere with job performance, what hope is there for people who do live with physical and mental handicaps?

In effect those rulings by the Supreme Court and the Human Rights inquiry can condone discrimination as long as the prejudice and bias is "honestly held". What a mockery of the intent and spirit of the Human Rights Code in this province!

Do we need any clearer reminder that B.C.'s Human Rights Code must be amended immediately to spell out rights and protection for mentally and physically handicapped people?

The B.C. Association for the Mentally Retarded calls on the Minister of Labour, Bob McLelland, to implement the recommendation made in 1981 by the Human Rights Commission. It is clearly too easy to discriminate against

individuals in this province once they are fixed with an impersonal label.

—P.J. Russell, President,
B.C. Association for the Mentally Retarded
*Vancouver Sun*, 24/12/82.

While it is not certain whether the court would decide differently were the code amended, the changes would at least assure more explicit protection, and more precise language.

As noted above, although disabled people are not named in the B.C. Human Rights Code, they may seek redress under the category "discrimination without reasonable cause" in the areas of:

S2 publishing signs and notices indicating discrimination;
S3 public facilities, accommodation, or service;
S8 employment;
S9 trade unions and occupational assocations.

Many people, including the disabled, are not aware of this.

On the other hand, there are remaining limitations. Disabled people are not protected in sections of the code dealing with:

S4 purchase of property;
S5 leasing of property;
S6 wages;
S7 requesting information on application forms, or at interviews.

The Recommendations the Commission puts forward in this regard have two aims—to protect disabled persons from discrimination and to ensure an equitable standard

of living for the disabled through better access. The *Obstacles* Progress Report states:

> The condition of disabled persons in Canada poses the fundamental question about the worth of any human being and about the future value of the country . . . .
>
> The single point that the Committee wants to make here is that Canada has always prided itself on its humane foundations of government. It is precisely in times of economic, political and social strain that the true humanity of a people is proved. In those times, in these present times, a country decides whether it is a nation which includes everyone, or whether it is an economically segregated society, which includes as full members only those who can pay the price of admission . . . .
>
> What is the value of Canada unless it continually expands the participation of all Canadians? What will be the future of Canada, if it does not?
>
> —*Obstacles*

> "Rights Now" is not a demand by people who are handicapped to be equal with others in the manner of their lives. It is a demand to be equal with others in their legal rights.
>
> —Submission of the Capital Region Association for the Mentally Handicapped

*The Commission Recommends:*

Terminology 1.) That protection to disabled people be extended through the use of the clause "no person shall discriminate

against any person because of the *physical or mental* condition of that person".

2.) That physical or mental condition include a condition limiting or perceived or believed to limit the performance of normal activities by a person who is or is believed or perceived to be suffering significantly and permanently from a physical or mental limitation, disability, infirmity, malformation, or disfigurement.

Without limiting the generality of the foregoing, physical or mental condition includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide or on a wheelchair or other remedial appliance or device; mental retardation or impairment; a learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language or a mental disorder.

**Denial of Accommodation, Service, or Facility**

3.) That the protection given to disabled people by Section 3 be more clearly set out to say that no person shall unreasonably deny public facilities, accommodation, or service to any person or class of persons because of physical or mental condition.

**Purchase and Lease of Property**

4.) That disabled people be included in Sections 4 and 5 of the Code so that no person shall unreasonably deny to any person the opportunity to purchase or lease land because of physical or mental condition of that person.

**Employment Advertising**

5.) That disabled people be included in Section 7a of the Code so that no employer can express an intention to discriminate in any way because of a physical or mental condition.

**Requesting Information on Application Forms or During an Interview**

6.) That disabled people be included in Section 7b so that no employer can ask questions on an application about a physical or mental condition unrelated to the skills and ability to perform the work available, or refuse an interview to a person only on the basis of information relating to that

physical or mental condition.

Employment

7.) That the protection extended to disabled people by Section 8 be clearly set out to say that no person shall be refused employment or advancement or be discriminated against in respect of employment or a condition of employment, or be refused a referral for employment because of a physical or mental condition unless that condition materially affects the quantity or quality of production by the employee or applicant and the decrease in productivity cannot be accounted for by an adjustment of salary.

Trade Union and Occupational Associations

8.) That the protection extended to disabled people by Section 9 be clearly set out and state that no person can be refused membership in a trade union, employer's association, or occupational association because of an unrelated physical or mental condition.

*Recommendations to Ensure an Acceptable Standard of Living*

The Commission feels that disabled people should not be subject to discrimination, should receive the same

benefits from, and have the same access to, public facilities, employment, and ownership of property available to others. The Commission also recognizes that in order to ensure a satisfactory standard of living for the disabled, some special provisions must be made. The Commission, therefore, recommends:

9.) That architectural standards continue to be dealt with in the Provincial Building Code to ensure access to public buildings, rental accommodation equipped with elevators, and all work places where wheelchair access for the disabled can be constructed at a reasonable cost.

## THE BETTER HALF USUALLY HASN'T: DISCRIMINATION ON THE BASIS OF SEX; AND RELATED MATTERS

For thirty years now in B.C., there have been legal injunctions of one form or other against discrimination on the basis of sex. Certainly within the past decade, it is a principle that has gained widespread currency and support. Many people, in fact, assume that such discrimination has been virtually eliminated.

At our hearings, a cross-section of groups—not only those explicitly feminist in focus, but also spokespersons for labour unions, the Civil Liberties Association, and the Elizabeth Fry Society—presented submissions that strongly supported the proposed changes to the Code that relate to discrimination on the basis of sex, as well as some tangential concerns that we take up here.

Their submissions, while highlighting gains, paint the overall picture in a less encouraging light. They expressed particular concern that, at a time when the media concentrate on "dress-for-success" issues and raise expectations of every woman becoming "superwoman", real obstacles are being trivialized and the impetus towards assuring women equal place in society is being lost. That "superwomen", by definition, represent only a tiny fraction of working women—and even they usually earn less than their male colleagues "at the top"—underlined their point. It is the reality, not the image, that needs improving.

The Code recommendations they addressed include issues of equal pay and sexual harassment; and a number of provisions relating to family status, family composition, and source of income. In addition, several groups raised the problems for women resulting from the lack of transition houses and adequate daycare facilities. These latter issues were characterized as examples of remaining forms of *de facto* discrimination, structural impediments to women's equal access to resources and opportunities.

## *Equal Pay:*

## *Women Hold Up Half the Sky and They Do So for Half Pay*

Of all issues affecting women, equal pay is potentially the most far-reaching and also the one that has gained the widest public recognition. Equal pay legislation has been in force since 1953. Spokespersons point out, however, that a generation later, for every dollar that a full-time male employee earns, a full-time female employee earns 62 cents (*Women and Work*, the Canadian Advisory Council on the Status of Women). The conclusion many have reached is that current equal pay legislation simply doesn't work. It has not been effective in narrowing the wage gap between men and women; on the contrary, between 1972 and 1977, the gap between men's and women's earnings *increased by* 55.6% in dollar terms (Women's Bureau, Federal Department of Labour).

### *Job Segregation*

> A woman is employed by a major corporation as an executive secretary. She has extensive responsibilities, including speaking publicly on behalf of the corporation, making decisions in regard to her department's budget, and supervising five other staff members. She receives a salary of $1400 per month. The man who cleans the corporation's offices receives $1900 a month for supervising one person with whom he does general evening cleaning duties. Under the current wording of the Code, no recourse is available, since a person can only complain about wage discrimination if the jobs performed are similar.
>
> —*Kinesis*, Dec. 1982/Jan. 1983.

The argument advanced is that a primary reason existing

equal pay legislation hasn't been effective is job segregation. Men and women are seldom doing precisely the same work. There are "women's jobs" and there are "men's jobs". The latter simply command almost twice the wage of the former; that is, women are concentrated in service occupations and clerical work, as opposed to the better paying heavy industries and transportation sectors.

Sixty-two percent of all women working for pay are in clerical, sales or service jobs. Even in other sectors, women workers are concentrated where the wages are lowest: for example, women make up 74% of employees in clothing manufacturing where the average weekly wage is $173; but only 6% of employees in pulp and paper production where the averagely weekly wage is $395 (all from *Women and Work*, 1979 CACSW). "Inside workers" (clerks) often earn $300 a month less than "outside workers" (labourers) (*Vancouver Sun* 18/2/81). A nurse with 14 years of education earns less than a delivery man (CACSW).

The upshot is that, even though women constitute less than 40% of the workforce, two-thirds of *all* minimum wage workers are women. A 1977 report by the Women's Bureau (Federal Dept. of Labour) noted that more than 72% of working women earned less than $10,000 compared with only 31.4% of men.

Even higher education has failed to reduce this differential. Although women constitute almost half the graduates from post-secondary institutions, female graduates are still mainly in traditional female jobs, such as teaching, nursing, and secretarial services (Statistics Canada, *Higher Education—Hired?*, 1980). Women with a university degree earned an average of $9,966 in 1976, scarcely $300 more than men with a grade eight education (Women's Bureau, Federal Dept. of Labour). Not surprisingly, women graduates tend to be over-qualified for the jobs they can secure.

Critics of current provincial equal pay provisions note that these require that men and women perform the same or similar work. If the high-paying fields are dominated by

men and historically inaccessible to women, using that criterion will inevitably fail to redress the situation. Women, confined to the "pink ghetto", remain without recourse to "equal pay" remedies.

And, if anything, the job ghettoization is increasing. Despite all the "first-women" ground-breaking stories, between 1971 and 1974 the percentage of women in the service sector jumped from 45% to 51% and women clerical workers from 68% to 73% (*Women and Work*, BCFW, Sept. 1979).

The only effective attack on such an obdurate, long-standing problem is two-pronged. *Affirmative action programs*, which we enthusiastically endorse; and second, implementing the concept of *equal pay for work of equal value*. We discuss the latter below in terms of a recommendation for amending the Code.

### *Countering Discriminatory Tactics*

Often job discrimination is disguised by calling substantially the same work by different job titles or classifications, with different wage scales. Sometimes these distinctions have a long history. More insidious, however, is inclusion, as a minor part of the job description, of a responsibility or requirement that cannot be met by a majority of women. For example, this might be a stipulation regarding height, often 5′ 8″ or 5′ 6″. According to Statistics Canada, 80% of Canadian women are shorter than 5′ 6″. This marginally relevant requirement or some minor responsibility may be used to justify a large pay difference.

Arguments placed before the Commission suggest that a move to the concept of equal pay for work of equal value would counter historical inequalities and undermine classificatory subterfuges. As well, it would ensure that both men and women were paid in accordance with the actual job responsibilities.

Cases that were cited include:

- Six nurses working in federal penitentiaries won back pay of $1000–$2000 and salary increases of about $1000 when they successfully argued that they were doing essentially the same work as male health-care officers, despite the fact that their job descriptions differed.
- The nursing director of a veteran's hospital complained that she was receiving less pay than the other directors (all male); she won $14,262 in back pay as well as a salary adjustment commensurate with her peers.

*Equal Pay for Work of Equal Value*

The principle of equal remuneration for work of equal value is not new; it was first recognized in 1951 at the International Labour Organization's Geneva meeting (Convention No. 100). By 1972, Canada, having received approval from all the provinces, ratified this Convention. Since 1977, the federal Human Rights Act provided for equal pay for work of equal value at those establishments under federal jurisdiction—such as airlines and railways, and the federal civil service (Québec passed similar provisions in 1975).

The Canadian Human Rights Commission has developed guidelines and interpretations in this area, and determines equal value by a composite of the skill, effort and responsibility needed to do the work, and the conditions under which the work is performed. Application of such criteria has resulted in significant decisions:

- In Québec, a group of female typists, receptionists and IBM operators won equal pay by demonstrating that their work was equal in

value to their male colleagues who worked as wood measurers, drafters and inventory clerks.

- Under the federal Human Rights Act, government cafeteria and laundry workers won their claim of equal value with warehouse keepers and watchmen.
- One of the best-known cases is the $2.3 million settlement in back pay to 470 federal librarians (65% of them female) to bring their wage scales up to those of historical researchers (73% male), who had traditionally been higher paid, despite the fact that their work often required less education than the former.

Again, in 1981, a U.N. Convention on the elimination of all forms of discrimination against women required that adherents provide measures "to ensure. . .equal remuneration. . .in respect of work of equal value" (*Vancouver Sun* 13/3/82). The convention was ratified by Canada, but with a qualifier to the effect that Canada was already complying—"and will continue to implement the object and purpose". This effectively undermined any genuine commitment to the "work of equal value" principle. Presenters characterize this as a clear backward step from the 1972 ILO ratification (when B.C. gave its approval), and a shrinking from commitment to break the low wage cycle that entraps women.

The Canadian Conference Board, in its 1982 Industrial Relations Outlook, predicted increasing demands for equal pay for work of equal value, particularly "in the context of equalization of plant and office base rates" (*Vancouver Sun* 13/3/82). As more innovative settlements occur under federal jurisdiction and in Québec, there will be greater pressure for adoption. The Commission seeks to ensure that the legal backing is in place to support and facilitate this movement through appropriate amendment of the Code.

*Recommendations*

Although cases that have been brought to a hearing are still relatively few, the principle of equal pay for work of equal value provides support for both individual workers and unions in their struggle to obtain genuine equality of access for women. In addition, it is the essential complement to equal opportunity programs which also work to break down historical barriers for women.

*The Commission Recommends:*

14.) The concept of "equal pay for work of equal value" for men and women workers be incorporated into the Human Rights Code with "equal value" to be determined by the composite of skills, effort, responsibility and working conditions.

The Commission feels that specific methodology for administration of this provision should be worked out in consultation with unions and employers, and incorporated into guidelines to be used by the Commission.

*Sexual Harassment*

The right of women to work at their jobs without intimidation, threats or coercion for the granting of "sexual favours" would seem to be self-evident. What is becoming increasingly known is the degree to which that right is infringed upon, and currently without adequate redress.

As the Commission uses the term, "sexual harassment" refers to harassment, intimidation, coercion, or threats to suspend, impose a penalty on, or discriminate against any person because of that person's refusal to engage in sexually related interaction while applying for work, during work, or after work, or in commencing with or obtaining services or tenancy.

It is argued that sexual harassment is rooted in the assumption that every woman has her price and being her superior at work entitles you to a cut rate. Gloria Steinem, founding editor of MS. magazine, has described this as "a reminder of powerlessness—a status reminder" for women.

> I was working as a cashier for one of the large chain drug stores. The boss was continually propositioning women. There was a narrow pathway between where the cash register was and a wall. One time I was walking through the pathway and he was coming through the other way. He continued and instead of allowing me time to back up he pressed me against the wall and as he went by he grabbed my behind. I told him to take his "paws" off me. He looked rather stunned and walked away. Later the assistant supervisor came over and told me I was fired.

> My experience occurred during the first few months of employment. It happened in a locked supply office. The man was very strong, picked me up and took me into a little room (with me protesting). I didn't think he would actually do anything, I thought he was just fooling around. He held my arms and proceeded to feel my body. After I finally convinced him to put me down (in tears), he informed me that before he got transferred he would make love to me whether I wanted to or not.
>
> —*Sexual Harassment in the Workplace*, A Discussion Paper by the Women's Rights Committee of the B.C.F.L. and the Vancouver Women's Research Centre, March 1980.

Many victims quit or are fired after they have rejected advances. The moral status of the woman is in question

rather than the responsibility of the man.

> I was frightened because I did not wish his attentions and did not know what to expect next. I needed the job and so pretended nothing happened.
>
> I felt absolutely humiliated and powerless, there was very little I could do and the feeling of helplessness and frustration only added to the intensity of the experience.
>
> —*Sexual Harassment in the Workplace*

As an expression of power rather than desire, sexual harassment is like rape. But unlike rape, sexual harassment has not been taken seriously. The very fact of its being so widespread (both the Backhouse and Cohen study, *The Secret Oppression: Sexual Harassment of Working Women*, conducted across Canada in 1979, and the B.C. Federation of Labour/Women's Research Centre study in 1980 report that 9 out of 10 working women have experienced some harassment) enables people to dismiss it as "normal", an occupational hazard. It cuts across lines of age, colour, class, size and shape; a woman's appearance or status are irrelevant.

A woman construction worker, in an example in the Backhouse/Cohen book, was both physically mauled and received threatening telephone calls. Harassment in such instances is arguably a measure of hostility to the increased presence of women in the workplace. And, because women do not have adequate legal recourse, they are intimidated and the problem remains hidden. Backhouse and Cohen indicate that almost half the women they questioned reported that they themselves or someone they knew had lost her job as a result of sexual harassment.

In the years since these studies were undertaken, the number of cases of sexual harassment reported has

increased. In 1981, the B.C. Human Rights Branch received 57 such complaints. These are being investigated under Section 8 of the code: refusal to employ, continue to employ, advance or promote a person without reasonable cause. Since none of these complaints has yet been adjudicated, the degree of protection is uncertain.

The federal government recently announced an active policy against sexual harassment on the job within the federal civil service. The province of Québec received an increasing number of complaints of sexual harassment (which they were accepting on the grounds of discrimination on the basis of sex), and it has moved to provide explicit protection against sexual harassment. Ontario included it in last summer's amendment to its code. In B.C. this is clearly an area that needs further legislative support.

> I feel in a place of work men and women should be friendly to each other without expecting any romantic or sexual response. I feel alone and empty sometimes when I see the barrier built up because men do not respect women as human beings.
>
> —*Sexual Harassment in the Workplace*

*The Commission Recommends:*

15.) That protection against sexual harassment be made explicit in the Human Rights Code.

*Family Status*

Discrimination on the grounds of family status impinges on the individual's right to equal access. In the areas of employment, tenancy and services, people are increasingly experiencing discriminatory exclusion because of their family relationships.

The discriminatory policy of some landlords against

single parent families, for example, tends to hurt women-headed households especially (because it is still women who are in most cases single parents). Such discrimination has serious implications because many single parent mothers do not have wide financial latitude or, in effect, choice. For example, 55% of female-headed households earn under $9000 a year, whereas only 16% of male-headed ones do (Women's Bureau, Canadian Labour Congress). This doesn't mean that these women are unable to meet the rent, but it underlies the reality that, when discrimination blocks their access to affordable housing, there are few places for them to turn.

*The Commission Recommends:*

21.) That section 3 (Public Facilities, Accommodation or Service), 5 (Leasing of Property), and 8 (Employment) of the Human Rights Code be amended to prohibit discrimination on the basis of family status.

*Tenancy*

Similarly, many single mothers—partially as a result of the high rate of default of spousal maintenance and child support payments—may find themselves on welfare, and thus be denied rental accommodation on the basis of their *source of income*. In addition to single parents and people on social assistance, young adults, especially students, are subject to such discrimination. The Commission recognizes that there is justification for denying or ending tenancy when people create excessive noise, damage property, fail to pay rent, and in other situations. But we feel that the mere fact that a person is young, a single parent, or on social assistance is not sufficient reason to deny tenancy.

*The Commission Recommends:*

22.) That section 5 of the Code (Leasing of Property) be amended to provide that no person shall be denied tenancy because of age, family composition, or source of income.

23.) That age be defined as including anyone over the age of majority but that provision be made so that special accommodation, such as accommodation for senior citizens, university students, the disabled, etc. is exempted.

24.) That family composition be defined as meaning whether both parents, or one parent, or children are included in the family unit.

The Commission recognizes that landlords must be able to limit the number of occupants in tenancy accommodation to prevent overcrowding, but takes the position that a limitation on the number of occupants should not be used for the purpose of discriminating on the basis of family composition.

*Employment Inquiries*

The Human Rights Code states that no employer can require an applicant to furnish information about race, religion, colour, ancestry, place of origin, or political belief. The Commission feels that, in addition, information about marital status, family composition, sex, or age, is irrelevant in determining whether or not a person is qualified for any type of employment. Employers are able to use more sophisticated measures such as better interviewing techniques and inquiries into work record or previous employment.

*The Commission Recommends:*

25.) That section 7 of the Code (7a: Employment Advertising; 7b: Requesting Information on Application Forms or at Job Interviews) be expanded to prohibit inquiries into marital status, family composition, sex, age, or irrelevant criminal conviction.

## SEXUAL ORIENTATION

> The homosexual minority is caught up in a vicious circle of fear, prejudice and legal helplessness.
>
> —*Sexual Orientation*,
> A Policy Planning Report for the
> Canadian Human Rights Commission,
> August 1979

The arguments presented to us with respect to sexual orientation emphasized that it was "legal helplessness" that served to reinforce the "fear" and "prejudice". That, in effect, without explicit protection in the Code against discrimination on the basis of sexual orientation, such abuses are tacitly condoned. Groups—representing a variety of backgrounds—addressed this issue and expressed impatience and dismay that relatively little has been done to break the debilitating circle.

> The absence of protection from discrimination based on our sexual preference is incomprehensible. In spite of all the arguments and debates on this issue, a basic fundamental human right to be "free and equal in dignity and rights" [U.N. 1948 Universal Declaration of Human Rights] eludes the minority that has sexual preferences other than heterosexuality.
>
> We, as members of The Gazebo Connection [an organization of more than 100 lesbian professional women] and as members of the gay community at large, are no longer content with mere discussions or token gestures of recommendations regarding inclusion of sexual orientation as a proscribed ground for discrimination. Rather, we strongly affirm the

need for social action and implementation of the recommendations on this issue.

—The Gazebo Connection

The prevalence of such discriminatory acts was suggested in a string of examples: an adult male was harassed by his landlord after it was discovered he was gay and finally had to break his lease; a gay male was fired from his job for a petty infraction—his employer subsequently told another employee it was because he was gay; an adolescent was advised to leave school at age 15 because the school could not "handle" his being gay; several people received abuse and inadequate professional attention from medical facilities after requesting treatment for V.D. (from *Sexual Orientation*, *ibid.*).

> Consider gay men who tolerate insulting jokes in the workplace for fear of losing a chance at promotion, lesbians who dare not acknowledge their love of another woman for fear of losing the custody of their children, gay and lesbian tenants who are afraid that a landlord might use any excuse to get rid of them, continuing examples of insults and unprovoked violent attacks on the streets and so on.
>
> —Vancouver Gay Community Centre Society

*Explicit Legal Affirmation*

> Damaging stereotypes which severely curtail our personal freedoms are only reinforced when there is no legal basis for preventing discrimination.
>
> —University of Victoria Gay Focus Club

In the last 15 years, there has been an increasing recognition of the rights of citizens with respect to sexual orientation. In 1969, consensual sexual behaviour

conducted in private between persons over 21 years of age was decriminalized. This was clearly only a halfway measure since other forms of discrimination were untouched.

> The paradoxical duplicity of a legal code which ostensibly places individuals beyond criminality in regards to consensual sexual acts in private, yet which fails to cement that affirmation in legal protection against discrimination because of those acts smacks of an hypocrisy which does Canada no credit.
>
> —*Sexual Orientation*

In 1973, the American Psychiatric Association's Position Statement on Homosexuality and Human Rights noted that "homosexuality per se implies no impediment in judgement, stability, or reliability..." and further, deplored "all public and private discrimination against homosexuals in such areas as employment, housing and public accommodation." Two years later, the Canadian Psychiatric Association concurred:

> The Canadian Psychiatric Association deplores any restriction on the civil liberties of any citizen by virtue of that person's sexual orientation, and it further declares that homosexuality per se should place no burden of proof of judgement, capacity or reliability on such persons greater than that imposed on any other individual.
>
> —cited in *Sexual Orientation*

Support from churches has also been forthcoming. United Church:

> We can begin by affirming the right of persons regardless of sexual orientation to employment, accommodation, and access to the services and

facilities that they need and desire.

—United Church of Canada,
Submission to the Ontario Human Rights
Commission, Oct 1976;
quoted in *Sexual Orientation*

Anglican Church:

We affirm that homosexual persons are entitled to equal protection under the law with all other Canadian citizens.

—Statement regarding *The Reporting on the Action of the Anglican Bishops . . .*
Feb 27, 1979;
quoted in *Sexual Orientation*

Canadian Unitarian Council:

The seventeenth annual meeting of the Canadian Unitarian Council encourages all societies and individual members to support all efforts to modify federal and provincial codes of human rights to bar discrimination based on sexual orientation.

—quoted in *Sexual Orientation*

Organizations as diverse as the Canadian Bar Association, the Canadian Labour Congress, the Canadian Association of University Teachers, the National Association of Women and the Law, the Advisory Council on the Status of Women, the Planned Parenthood Federation of Canada, the Canadian Federation of Civil Liberties and Human Rights Associations, and many others have gone on record in support of freedom from discrimination on the basis of sexual orientation.

Such protection is included with respect to municipal workers in Toronto, Ottawa and Windsor. For five years

now, it has been part of the human rights legislation in Québec.

*Exploding Myths*

Presenters of briefs argued for increased education to raise public awareness and debunk myths surrounding the issue of sexual orientation. In tandem with effective legislation, there would be reciprocal benefits.

> We, in the Island Gay Community Centre Society, believe that it is the duty of this commission to involve itself in substantial programs of education in all areas where public attitudes regarding human rights do not reflect enlightened thought. Further, we believe that there is a case to be made for treating the issue of sexual orientation with priority.
>
> Next to women, the minority that isn't, gays are one of the largest minority groups in B.C. Perhaps the largest!. . . A conservative estimate places the size of B.C.'s gay population at 180,000. . . . But, despite our numbers, we are, without a doubt, the least understood minority. The existence of this widespread ignorance creates a situation in which even our growing number of supporters are hesitant to offer more than a statement in our defence. Most politicians and governments are loath to go even that far.
>
> —Island Gay Community Centre Society

One of the most deep-rooted yet specious arguments against granting employment protection on the basis of sexual orientation maintains that homosexuals would be a security risk, subject to blackmail and other threats. If anything, this is a persuasive argument for extending adequate legal protection. If discrimination on the grounds of sexual orientation were proscribed, individuals would

be much less vulnerable to pressure or coercion.

Currently, the B.C. Human Rights Code affords limited protection to homosexuals and lesbians. Under the "reasonable cause" provision in section 3 (public facilities, accommodation, or services); 8 (employment); and 9 (membership in trade unions and occupational associations), cases may be brought regarding discrimination on the basis of sexual orientation. But, apart from the fact that there is still no *explicit* prohibition in these areas, there are also many other areas where no protection is currently provided. These include discrimination in the purchase or leasing of property, wages, advertising of employment, or requesting information on application forms or job interviews.

*The Commission Recommends:*

10.) That all people, regardless of sexual orientation, should be protected by all sections of the Human Rights Code.

11.) That protection to homosexuals and lesbians be extended through use of the clause (no person shall be discriminated against on the basis of) "sexual orientation".

12.) That sections 3, 8 and 9, dealing with acts of discrimination in public facilities, accommodation or services, employment and membership in trade unions or occupational associations be enlarged so as to specifically name sexual orientation as a prohibited basis for discrimination.

13.) That homosexuals and lesbians be given the protection of sections 4, 5 and 7 of the Code so that no person shall deny any person the right to purchase property, or lease property, because of a person's sexual orientation, so that no employer can advertise an intention to refuse employment to a person because of

sexual orientation, and so that a person cannot be asked questions about their sexual orientation in a job interview.

## MANDATORY RETIREMENT: WILL YOU STILL NEED ME WHEN I'M 65?

"*Make this year a happy one for lonely old Edith*". Prominent among *The Times* of London advertising appeals, next to the photos of pitiful African or Bangladesh babies with their distended bellies, the sad wide-eyes faces of hopeful foster children from far-off Asia, the less exotic but still deserving fresh air fund for slum children, we find little *old* Edith.

The ad continues: "Every day she expects to spend utterly alone. The only voices she will hear are the occasional official caller, or on her few visits to the shops.... The heartache of loneliness is hard to bear; depressing and damaging to health.... The tragic plight of old people like Edith is easily forgotten amidst all the other problems of our day. The years are running out for them." Like those other entreaties where $10 buys food for a week for a family of four, here you are assured that £5 can bring practical assistance to another aged person and £30 contributes towards setting up a new geriatric unit.

"Lonely old Edith" represents a view of our old people as objects of pity and charity. There is something profoundly disturbing in this attitude. Old age is virtually everyone's future; private charity is hardly an adequate solution. Crude self-interest alone, one of our most potent social forces, should dictate a stronger response. Instead, we are confronted with a modern form of discrimination—ageism.

The old must often leave their jobs and concomitantly lose much of their identity and social life. They are rendered useless, expendable; expected to putter and not trouble the rest of us with a spectre of our future. Ageism, as defined by gerontologist Dr. Alex Comfort (in *A Good Age*), is "the notion that people cease to be people, cease to be the same people, or become people of a distinct and inferior kind, by virtue of having lived a specified number of years."

Statistics Canada labour force studies brought to our attention the extent of increasing dislocation from the workforce even among those well below retirement age. When experienced workers have significantly greater than average difficulty in finding jobs, there is *prima facie* evidence to suggest ageism. In the 1980s, workers over age 45 experience longer bouts of unemployment than do younger workers. Only 27% of people over 55 have jobs at all (reported in *Maclean's*, January 17, 1983). "Because a large chunk of the population—43%—has no investment or private pension income, retirement often means near-poverty or actual destitution. Fifty percent of people over age 65 live on less than $6,000 per year" *(ibid.)*.

The Commission received a brief at our Victoria hearings that technically falls outside our jurisdiction, but is a poignant reminder of the interconnectedness of problems. When elderly persons leave the workforce, one set of their social connections may disappear. If retirement means living on diminished finances, housing options may be limited. Then, if circumstances force them to abandon other personal linkages, the unintended consequences can be serious.

> Many people of retirement age or younger are forced, either by financial considerations or failing health, to give up their homes. This move, in many instances, greatly restricts their alternatives. Frequently, a spouse has been lost and at this time, when a pet would provide much needed companionship, the bereft individual is faced with the standard "No Pets" regulation. This rule is almost 100% operative in strata-title housing and apartment rentals.
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> Medical science has found, after extensive research, that pets are of great benefit in giving an individual, in any age bracket, from early childhood to advanced age, the necessary impetus to avoid depression and a feeling of

> uselessness. This syndrome is frequently aggravated by pressure from various groups in society, who view the retiree as an individual of no further benefit to the community. . . . You see before you a prime example of the need for a loving pet. . . .
>
> —Hazel M. Kenworthy

The point is made that "the things which make oldness insupportable in human societies don't at all commonly arise from. . . biological aging. . . (but) from sociogenic aging—the role which society imposes on people as they reach a certain chronological age" *(A Good Age)*. It is important to keep in mind that age 65 (the age at which 80% of B.C. employees who face mandatory retirement must leave the workforce) is an arbitrary figure. The German Chancellor, Bismarck, chose 65 as the year of retirement when he introduced the first old age pension law. His reasoning, appropriate for the 19th century, was that most of his citizenry would be dead by then anyway. (He himself stayed on as Chancellor until age 75 when he was forced out of office by the Kaiser.)

The world has changed. Canada now has 2½ million people over the age of 65, and expects that figure to increase *by a further million* by the year 2000 ("Human Rights and an Aging Population" by Gordon Fairweather, Chief Commissioner of the Canadian Human Rights Commission, June 1983). At the same time, there is a growing sentiment among Canadians that senior citizens be afforded protection from discrimination. *The Survey of Public Opinion on Human Rights* conducted for the Canadian Human Rights Commission in June 1981 found that 9 out of 10 Canadians support protection for people 65 and over in any federal anti-discrimination charter.

Almost three-quarters (73%) of those surveyed in a B.C. study felt that the practice of mandatory retirement was wasteful (*Mandatory Retirement in British Columbia*, John P. Herzog, April 1980). This was similar to the findings of a

1975 study undertaken by the Canadian Council on Social Development:

> In discussions with groups in all the provinces visited, the point was made again and again by participants that the over 65's are not a composite lump with a single set of characteristics and therefore open to a single policy, but 1.7 million individuals with a wide variety of aspirations and needs. While many did want to retire, a proportion greatly desired to continue work after 65 and should not be denied the opportunity to do so.
>
> —Joan C. Brown, *How Much Choice? Retirement Policies in Canada*

Manitoba and New Brunswick have already banned mandatory retirement. Further, the Croll Committee of the Canadian Senate has recommended the abolition of mandatory retirement in the Federal Public Service, and in Federally Chartered Corporations. In addition, it recommended that each province pass statutes banning the practice.

The idea of waste is given further support by evidence which shows that older people have a better absenteeism and accident record *(A Good Age)*. And preconceptions are punctured by research which reveals, for example, that it takes as long for 15 year olds to learn a language as people over 70 *(ibid.)*. There is no question that discrimination in employment based on age infringes upon the freedom of choice of individuals. And, as with other aspects of human rights legislation, it is equality of opportunity that we wish to enhance. Choice rather than force. Consideration of an individual's abilities rather than a group assessment.

> Banning mandatory retirement does not mean making people stay on the job until they drop. It

just means giving them a chance to stay on if they want to and if—let me stress this—if they can continue to do their work competently.

—Gordon Fairweather, "Human Rights and an Aging Population"

Mandatory retirement rules are common among large employers. Approximately two-thirds of employees in B.C. are subject to some form of mandatory retirement rule (Herzog, *ibid.*). The present Human Rights Code protects people between the ages of 45 and 65 from age discrimination in employment. The Code does not specifically prohibit an employer from formulating and enforcing a policy of mandatory retirement for employees who are 65 years or older. Various rules and statutes provide for mandatory retirement over a range of different ages. A complete study of the issues and problems surrounding mandatory retirement is contained in the B.C. Human Rights Commission's report on Mandatory Retirement in British Columbia (Herzog).

*The Commission Recommends:*

16.) That the definition of age in Section 1 of the Human Rights Code be changed to eliminate the upper age limit and set as the lower age limit the age of majority.

17.) That Sections 8 (3) (employment) and 9 (3) (trade unions and occupational associations) of the Code be amended so that the operation of any terms or conditions in a retirement, superannuation or pension plan will not require the retirement of any employee because of that employee's age.

18.) That while an employer may retain a standard age at which employees may retire at full pension, nothing should preclude employees from continuing to work if they

wish to do so. However, if people continue to work beyond age 65, they could legitimately be excluded from participating in the pension plan (i.e., they would no longer contribute or earn pension credits, but/and would not draw pension until they stopped working).

19.) That where any other provincial statute requires retirement at a specified age, the Human Rights Code shall take precedence.

## LIST OF PRESENTERS

*Victoria Public Meeting*

Capital Region Association for the Mentally Handicapped
Dave Vickers
Associated Disabled Persons of B.C.
Doug Ottenbreit
B.C. Teachers' Federation—
Committee on Racism in the Schools
Pamela Webber
Margaret Strongitharm
Inter-Cultural Association of Greater Victoria
Island Gay Community Centre
Barry Goddard
U Vic Gay Focus Club
Victoria Black People's Society
Barry Carter
Western Institute for the Deaf, Vancouver Island Branch
Susan Corman
B.C. Association of Children with Learning Disabilities
Mrs. Norma Wilson
Handicapped Action Committee
Joanne Neubauer
Doug Wilson
Mrs. Cunningham
Mrs. Hazel Kenworthy
Eugene Kallis

*Port Alberni Public Meeting*

Labour Council
Larry Baird
Nuu-Chah-Nulth Tribal Council
Mr. Swan

*Nelson Public Meeting*

Women in Need Transition House, Trail
  Sandra McAndrew
Nelson Women's Centre
West Kootenay Women's Association
  Diane McKnight
Union of Spiritual Communities of Christ
  (Orthodox Doukhobors)
Kootenay Society for the Handicapped
  Mitch Lorette
  Dorothy Hillsley
Nelson and District Community Resources Society
  Vic Cowley

*Kelowna Public Meeting*

Okanagan Women's Coalition
B.C. Human Rights Coalition
  Jodie McMurray
  Fay Robertson
Branching Out
  Rene Bierman
Immigrant Services, Vernon Social Planning Council
  Agnes Chung
Elizabeth Fry Society, Okanagan Branch
  Charlotte Muldowan
Peter Smith
  As an individual presenting proposals of the
  B.C. Government Employees' Union

*Prince George Public Meeting*

Sakeni Tribal Council
McLeod Lake Indian Band
  Vern Solness
Prince George Association for the Handicapped

Canadian Paraplegic Association
Paul McCallam (individual)
Prince George Epileptic Association

*Williams Lake Public Meeting*

Informal discussion with community members.

*Vancouver Public Meetings*

Chinese Rights Commission
H. Tsang
SUCCESS
Angela Kan
B.C. Civil Liberties Association
John Russell
NACOI, B.C. Chapter
Raj Kapahi
Greater Vancouver Association of the Deaf
Karen Gehrs
Henry Vlug
B.C. Federation of Labour
Astrid Davidson
B.C. Association for the Mentally Retarded
Cathy Herb
Wendy Baker
Ed May
Gay Rights Union
Don Larventz
Moon Mishra
B.C. Coalition for the Disabled
David Jaffe
Canadian Jewish Congress
Jean Gerber
Vancouver Gay Community Centre
Stuart Alcock
The Gazebo Connection
Mary Sims

Vince Manis
Mayor Michael Harcourt
Vancouver Richmond Association for the
Mentally Handicapped
  Richard Earl
Brownstone Society for Independent Living
  Sandra McRae
MOSAIC
  Elizabeth Lee
North Shore Association for Physically Handicapped
  John Neumann
Associated Disabled Persons of B.C.
  Alex Vey
Committee for Racial Justice
  Aziz Khaki
Vancouver Right to Life Society
  Betty Green